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Powers Parts Ways With Weil, Gotshal, Will Start Own Firm

Amy Miller

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Matt Powers Image: Jason Doiy/The Recorder

Patent litigator Matthew Powers is leaving Weil, Gotshal & Manges to start his own plaintiffs firm. "I'm as excited about working as I've been in a long time," Powers said when reached by phone at the annual Federal Circuit Bar Association's Bench and Bar Conference in Key Biscayne, Fla.

Powers, co-chair of Weil's patent litigation group, said his departure was a "mutual decision" between him and firm representatives. He will remain at Weil until Friday, after which he'll move into space the firm has given him for the next six months.

Initially his new firm, Tensegrity, will focus on handling straightforward plaintiffs work on a contingency basis. He'll be joined by fellow Weil litigation partner Steven Cherensky, who could not be reached for comment. But Powers said over time, the firm could evolve into something more like John Desmarais' patent-holding company Round Rock Research, the second-largest patent owner among nonpracticing entities.

"I want to go in a different direction that you can't do in the context of a large general practice firm," Powers said. Powers said he and the firm did have discussions before his departure, and partners agreed the move was a good decision. "The parting is amicable on both sides," Powers said. Weil executive partner Barry Wolf said in a statement that the firm is "fully supportive of Matt's decision to leave Weil and start a new plaintiff's venture and we wish him well."

Weil's patent litigation group also lost another co-chair in New York this week. Nicholas Groombridge left to join Paul, Weiss, Rifkind, Wharton & Garrison's N.Y. office. Powers is a founding member of Weil's patent litigation practice in Silicon Valley. In 1993, he and fellow patent litigators Edward Reines and Jared Bobrow left Orrick, Herrington & Sutcliffe to start the practice. "Jared and I have worked with Matt for over 20 years," Reines said. "We came to Weil to help build a premier IP practice. We know Matt will do well and of course wish him well."

Most recently, Powers has represented Apple Inc. in its escalating patent infringement battles against competitors such as Motorola Inc. over smartphone technology. He also represented Microsoft Corp. at the trial and Federal Circuit levels in its unsuccessful battle against i4i Inc. On June 9, the U.S. Supreme Court upheld a record \$290 million jury verdict against Microsoft for infringing the small Canadian company's patent, holding that alleged infringers who claim that a patent is invalid must prove it by clear and convincing evidence.

Powers has also handled high-profile patent cases for Intel Corp., Cisco Systems Inc., and Oracle Corp

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Steven Cherensky litigates patent disputes in district court across the country and at the ITC. Mr. Cherensky has extensive experience in matters relating to computers; semiconductor devices, processing, and packaging; software; mobile phones; medical devices, and other technologies.

He has litigated high-stakes matters for Apple, Amkor, Applied Materials, Cisco, Intel, Micron, Samsung and other leading technology companies.

Prior to practicing law, Steve worked in the semiconductor industry for eight years for a variety of companies.

Education:

Berkeley Law, JD

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The Powers of Persuasion

By Paul Freeman

Matthew Powers is the Willie Mays of Patent litigation

When Matthew D. Powers tries a patent case, a picture can be worth more than a thousand words. Consider the case in an East Texas federal district court where Powers was defending Microsoft against a claim that Windows XP violated a plaintiff's patent. During his opening statement, he flashed two photos side-by-side on a screen. They looked identical. But as he zoomed in, it was obvious that the two shots, taken from several thousand feet above ground, were radically different. One was a picture of the Great Wall of China, the other a section of the nearby Neches River.

Powers, now 50 and a partner in the Silicon Valley office of New York-based Weil, Gotshal & Manges, created this demonstration because he wanted the jury to look beyond superficial similarities between the plaintiff's and Microsoft's patents, and instead focus on details that would establish dissimilarities. The pictures made an impression. After deliberating a scant three hours, the jury returned a verdict rejecting the plaintiff's claim and its demand for damages of \$750 million. "It took a lot of time to find those pictures," recalls Powers.

Other examples of Powers' litigation prowess: a summary judgment dismissing a \$500 million patent infringement claim against Oracle, a jury verdict denying a \$3 billion infringement claim against Cisco Systems Inc., and a \$465.4 million recovery for client Lexar Media Inc. in a trade secret theft case against Toshiba Corp.

Bryan Richardson, senior patent counsel at Samsung Electronics, has worked closely with Powers. "I get the opportunity to work with and see some great lawyers. In my opinion, Matt Powers is the best trial attorney I have seen to date."

Weil Gotshal litigators share that assessment. Says partner Jared Bobrow, "Matt is unique because he is an excellent oral advocate, a superior strategist and a serious student of the law and technology. Many lawyers get high marks in one or two of these areas. But I haven't met anyone who combines all these skills in the way Matt does. I view him as the Willie Mays of patent litigation—he excels at all its facets."

Another partner, Vern Winters, says Powers is committed to excellence in everything he does. That includes even cooking, particularly grilling, reports Winters. "If Matt is making dinner, he wants to make the best dinner."

To understand how Powers wound up as a trial lawyer doing mostly patent cases, start with his childhood. His father was a college professor who moved from school to school every few years. At one point, the family lived in Wichita Falls, Texas, where Powers attended Notre Dame High School, a debate powerhouse. Powers joined its debate squad because by this time he had decided to become a lawyer. "Debating seemed like the best possible training," he says.

His debating skills earned Powers a scholarship to Northwestern University. While there, he sought out courses in a wide range of disciplines from top professors. By the end of three years, he'd earned a diploma, received a terrific education and was on his way to Harvard Law School, graduating in 1982. Powers then joined Orrick, Herrington & Sutcliffe's San Francisco office, intending to become an antitrust litigator. But large antitrust cases began to wane and litigators began searching for the next big thing.

While a first-year associate, Powers worked on a patent litigation matter. In addition to enjoying the work, he realized that several developments pointed to patent litigation as a growth area.

The first was the establishment in 1982 of the Federal Circuit Court of Appeals in Washington, D.C. Its mandate, to rationalize and strengthen the nation's patent law, reinvigorated the law. Also, the U.S. economy was morphing from manufacturing to high tech. Patents were becoming more numerous and considered key business assets warranting protection.

At this time, patents were prosecuted by boutique lawyers, who did double duty by also litigating patent disputes. Powers foresaw a need for lawyers fully committed to this litigation. "This was our pitch [to potential clients] from the very beginning," says Powers, who as an Orrick associate launched the firm's patent litigation practice. "To do this area of the law right, you had to do it full-time."

But by 1992, Powers, now an Orrick partner, had decided that the firm, known primarily for its regional bond work, wasn't a good fit for a full-time patent litigation practice. Also, the firm had shuttered its Silicon Valley office. "I felt that to grow the practice where I wanted it to go, we needed a Silicon Valley presence," explains

Powers. So he joined Weil Gotshal's Silicon Valley office of three lawyers, and he has been there ever since. Today, the Silicon Valley office has 40 full-time patent litigators; firm-wide, 115 lawyers do this work.

Powers likes patent law, he says, because, like antitrust law, it is dense and complex. "The fun thing about patent law is that there are a large number of important decisions clashing with one another," he says. "These tensions produce official gaps in the law where interesting cases are played out."

Powers also relishes the challenge of identifying the two or three legal issues in a case, out of perhaps hundreds, that will be "hinge" issues on which the outcome will turn. "He's really good at figuring out what [these issues] are going to be and why, and then directing energy to them," says Winters. Like a good chess player who sees the whole board, adds Winters, Powers can visualize how a case will play out before a judge or jury.

Powers believes a successful patent litigator must master three learning curves. The first is technology. "You have to be able to cross-examine an MIT guy well enough so he can't play games with you," he says. The second curve is knowledge of patent law. The third is first-class litigation skills. "We've been very focused in training people on these curves," he says. "You need people who can master all three."

Powers is the curves' avatar. Says Weil Gotshal partner Doug Lumish: "Matt can parachute into a case and in very short order assimilate a massive number of technically abstruse facts, identify the strengths and weaknesses of each side's positions, and then boil complex matters down to crystallized themes easily grasped even by lay juries."

No matter where or what's he trying, Powers assumes the jurors are intelligent and want to do justice, but need help from the lawyers. The challenge, he says, "is finding a path that a jury will understand, appreciate and accept, leading them to vote for your client."

Besides litigating, Powers sits on Weil Gotshal's management and executive committees, and co-heads the firm-wide litigation department, administrative duties that regularly take him to the New York City home office. "When not litigating or traveling, he spends a lot of days consulting with [other lawyers at the firm]," says Winters, who points out that Powers is "generous" with his time and has an open-door policy when in the office. But, Winters adds jokingly, Powers does have a minor character flaw. "He's mired in '80s music, so we have to listen to endless hours of Bruce Springsteen when we're in the litigation war room."

Given the scale of Weil Gotshal's patent litigation practice, Powers can't be involved in every case. So sometimes he must ask clients to bring cases to others in the firm that can capably handle their cases. Not an easy task, given Powers' talent and track record. "Matt is one of a small elite group of litigators I would trust with any kind of intellectual property case involving Intel," says its general counsel, Bruce Sewell.

Despite a hectic work schedule, Powers makes time for charitable work—he currently sits on the board of the Greater Bay Area chapter of Make-A-Wish Foundation—and for his family. He and his wife, Rebecca, have a big household: five children, ranging in age from 11 to 21, and four dogs, one a mixture of Chihuahua and pug. "I call it a 'chug,'" says Powers. "Rebecca insists it should be called a 'pugwawa.'"

How does Powers accomplish so much in a world where the days are only 24 hours long? He's extraordinarily efficient and, like our president, is joined at the hip to his BlackBerry. He's even drafted briefs on it. "Not too many, thankfully, or I'd be a candidate for a repetitive stress injury thumbs' class action," he says.

Reflecting on two decades-plus of trial practice, Powers says he feels bad for lawyers in their 40s or 50s who dislike practice but keep doing it for financial reasons. Powers isn't one of them. "If you're doing interesting things, stretching and learning, you're proud of being a lawyer," he says.

Speaking of pride, one of Powers' most memorable moments involved a big patent case where a young lawyer at the firm successfully cross-examined a key witness at trial. Powers remembers the look on the lawyer's face. "He'd done something good and significant that made him feel proud to be a lawyer."

Perhaps one day this lawyer will produce a courtroom demonstration as clever and effective as the side-by-side photo display Powers deployed in an East Texas courtroom.

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Paul Ehrlich has extensive experience trying complex patent cases in courts across the country and the ITC. Mr. Ehrlich successfully litigates cases at all stages, including through trial and injunction enforcement. Mr. Ehrlich has served as trial counsel in billion-dollar matters for industry-leading companies such as Apple, Microsoft, Cisco, Samsung, TSMC, and Applied Biosystems. Mr. Ehrlich's practice touches diverse technology areas, including consumer electronics, computer networking, operating systems, database software, VOIP, memory manufacture and packaging, medical devices, and Nobel-Prize-winning biotechnology.

Mr. Ehrlich has also taught patent litigation and trial skills as a guest instructor at Berkeley Law, and has coached winning student mock trial teams.

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